

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs.	:	
Ameren Illinois Company d/b/a Ameren	:	
Illinois, Commonwealth Edison Company,	:	
The Peoples Gas Light and Coke Company,	:	13-0077
North Shore Gas Company, and Northern	:	
Illinois Gas Company d/b/a Nicor Gas	:	
Company	:	
Adoption of Policies Concerning the	:	
Illinois Statewide Technical Reference	:	
Manual for Energy Efficiency.	:	

**STAFF BRIEF ON EXCEPTIONS
OF PROPOSED ORDER ON REHEARING**

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Table of Contents

I.	Staff's Alternative Position Properly Resolves All Three Issues.....	2
II.	Determination of Effective Period of TRM	3
III.	Impact of Disagreement Regarding Subcomponent of TRM Measure.....	9
IV.	Application of Resolved Measure Level Issues	12
V.	Findings and Orderings Paragraphs	14
VI.	Conclusion	15

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.830), respectfully submits its Brief on Exceptions in the instant proceeding. While Staff appreciates the Administrative Law Judge’s (“ALJ”) consideration on rehearing, Staff takes exceptions to the Proposed Order’s (“PO”) conclusions on each of the three issues. Staff is concerned that the findings in the PO provide uneconomic and perverse incentives that do not adequately protect the ratepayers funding the energy efficiency programs. For this reason alone, the Commission should reject the PO’s conclusions. See, e.g., Staff Reply Comments at 7. The recommendations that Staff initially made in this proceeding would remedy these incentive problems. Nevertheless, in recognition of the opposition to Staff’s initial

recommendations, Staff offered an alternative recommendation that continues to remedy these incentives issues while addressing many of the concerns raised by parties with respect to Staff's initial recommendations. The Commission should adopt this Staff alternative recommendation.

I. Staff's Alternative Position Properly Resolves All Three Issues

Staff recommends the PO should be amended to adopt Staff's proposed alternative recommendation: a November 1 deadline for submission of the Updated TRM to the SAG. This recommendation ensures that the Commission has adequate time to properly review both the consensus and non-consensus TRM Updates and issue Orders in those proceedings several months in advance of the start of the program year for which the Updated TRM would take effect. Adoption of Staff's alternative recommendation results in prospective application of TRM values and continuity of Commission-approved TRM values across program years as advocated by both the Utilities and the AG/CUB. Thus, Staff's alternative recommendation satisfies all parties' concerns; it was not opposed by the AG/CUB, and the Utilities' Reply Comments indicate they are open to an earlier deadline than March 1. Staff recommends that the Commission establish a schedule for the submission of Initial and Reply Comments for each Updated TRM such that the Commission can approve the Updated TRM (consensus and non-consensus TRM Updates) by March 1. Staff Reply Comments at 35-36. Despite AG/CUB's argument to the contrary, similar approaches have been successfully implemented in other states, such as Pennsylvania, for a number of years. See Staff Reply Comments at 13. , Staff notes that, despite the Utilities' concerns otherwise, the evaluation costs would not increase under Staff's

alternative proposal as no additional evaluation work would be performed, it will simply be performed earlier in the program year. Quite to the contrary, evaluation costs will increase under the Utilities' proposals due to the evaluators having to report verified savings in a variety of different ways during different time periods within a single program year based solely on dates when the Commission approves the consensus Updated TRM and resolves the non-consensus TRM Update issues under the current PO's conclusions. This unintended and costly result should be rejected, and the alternative position advocated by Staff should be adopted.

The Utilities state that if Staff's alternative recommendation is adopted, then, they recommend the Commission order the full evaluations be completed earlier as well. Utilities Reply Comments at 13-14. Staff does not oppose the Utilities' recommendation in this regard and recommends the Utilities incorporate these requirements in their contracts with their evaluators.

II. Determination of Effective Period of TRM

Staff is concerned that the PO as it currently stands encourages utility expenditure of ratepayer funds based on TRM savings estimates that became available over two Program Years before, although more recent and better data may be available. Obsolete data cannot accurately reflect the savings that energy efficiency programs have produced, meaning Program Administrators may appear to have achieved their required energy efficiency goals when, in fact, they have not. More importantly, Staff believes this would result in damage to the public interest. The trust and confidence of participating customers could be irreparably lost if those customers realize far less energy savings than promised by the Utilities after investing significant personal or corporate capital in the offered

measures. See Staff Reply Comments at 13. Thus, the Commission should not allow outdated TRM values to remain in effect beyond their respective program year.

Additionally, Staff is concerned that, as it currently stands, the PO contradicts the Commission's Order approving the first version of the IL-TRM, the IL-TRM itself, and the IL-TRM Policy Document. Docket 12-0528 Order at 5. In the Commission's Order approving the first version of the IL-TRM, the Commission explicitly approved the first version of the IL-TRM for specific program years. These program years are consistent with the designated TRM applicability specified in the *IL-TRM Policy Document* that the Commission also approved. The PO's conclusion should be rejected because it is inconsistent with the measure applicability provisions contained in the consensus *IL-TRM 1.0* and *IL-TRM 2.0*. *IL-TRM Policy Document* at 6-7; Docket 12-0528, *IL-TRM 1.0* at 8, 13; Docket 13-0437, *IL-TRM 2.0* at 8-9, 17. As noted in the Commission-approved *IL-TRM 1.0*, each measure in the TRM contains a unique measure code. *IL-TRM 1.0* at 13. As measures are updated, the version number and the effective date of each measure both are updated. Since the date of Commission approval (which is the effective date under the Parties' proposal that the PO adopts) cannot be known in advance of submitting the Updated TRM to the Commission after March 1, it would not be possible to accurately specify the effective date within the TRM measure code for each revised measure under the Parties' proposal. It is only if the Commission adopts Staff's position that this effective date can be accurately specified in the measure codes contained in the Updated TRM submitted to the Commission for approval. Adoption of the PO's conclusion would render that part of the TRM meaningless.

Additionally, Staff is concerned the PO will unintentionally result in unnecessary complication, confusion, and delay in the evaluation process and reporting. See PO at 3.

First, even assuming there are no non-consensus issues, the utilities and the evaluators would be forced to use two different versions of the TRM in calculating savings for different timeframes of a single program year: the old version of the TRM will be used for measures implemented until the date the Commission enters an Order concerning the consensus Updated TRM, then the savings after that date must be calculated using the new version of the TRM. Performing this calculation significantly complicates utility and evaluation reporting requirements and increases those costs.

Second, if the PO's conclusions are adopted, and there are non-consensus issues in a Plan Year, then the evaluators and Utilities will be responsible for reporting savings within a single program year over as many as four discrete measurement time-frames¹. This significantly complicates the evaluators' savings verification responsibilities and the Utilities' reporting requirements, and Staff is concerned that the PO overlooked this consequence to its conclusion.

Moreover, the PO states that the TRM's goals of continuity and updating would be better served if the TRM remained in effect at the end of each Plan Year until it is modified or updated. PO at 8. However, the PO errs when it states that "the TRM's repeated references to annual updates and the 'TRM Update Process' emphasize its continuous nature and demonstrates an intention by the parties to have the TRM remain in effect for

¹ That is, the TRM measures will be different for each of the following time-frames, (1) June 1-Date of Commission Consensus TRM; (2) Date of Commission Consensus TRM-May 31; (3) June 1-Date of Commission Resolution on Non-consensus Issues; and (4) Date of Commission Resolution on Non-consensus Issues-May 31.

future plan years until modified or updated pursuant to a Commission order.” *Id.* Quite the opposite, these references to the annual updates and the TRM Update Process itself demonstrate recognition by the parties that the TRM should reflect the most up-to-date measures available for each Plan Year. Moreover, each version of the TRM should be applicable only for the specific Plan Year in order to effectuate this goal of updating measures. Further, allowing a specific TRM version to be effective beyond its Plan Year, contrary to the specific limitations on applicability included in the TRM Policy Document, incents the utilities to approach TRM updates dilatorily when they anticipate that changes in measures would result in lowering savings for a measure or measures. Specifically, the *IL-TRM Policy Document* contains the following table to this effect:

Table 2.2: TRM Implementation Cycles

Cycle	EPY	GPY	Begins	Ends	Application in Evaluation and Implementation	Application in 3-Year Plan Filings
1	1		6/1/2008	5/31/2009	TRM does not apply to this cycle	TRM not used in this cycle
1	2		6/1/2009	5/31/2010		
1	3		6/1/2010	5/31/2011		
2	4	1	6/1/2011	5/31/2012	1 st ICC-approved TRM applies to GPY1 1 st ICC-approved TRM applies 2 nd ICC-approved TRM applies	TRM not used in this cycle
2	5	2	6/1/2012	5/31/2013		
2	6	3	6/1/2013	5/31/2014		
3	7	4	6/1/2014	5/31/2015	3 rd ICC-approved TRM applies 4 th ICC-approved TRM applies 5 th ICC-approved TRM applies	2 nd ICC-approved TRM shall be used in Plan filing
3	8	5	6/1/2015	5/31/2016		
3	9	6	6/1/2016	5/31/2017		
4	10	7	6/1/2017	5/31/2018	6 th ICC-approved TRM applies 7 th ICC-approved TRM applies 8 th ICC-approved TRM applies	5 th ICC-approved TRM shall be used in Plan filing
4	11	8	6/1/2018	5/31/2019		
4	12	9	6/1/2019	5/31/2020		

Staff Initial Comments on Rehearing at 4; *IL-TRM Policy Document* at 7 (internal footnote removed). By ignoring these self-imposed time frames of applicability for each version of the TRM, the PO would compel the TRM to be a static document, and contradicts the goal of continuously updating the TRM to reflect the most up-to-date measures. See Staff Initial Comments at 3-4. One of the central purposes of the annual TRM Update Process is to ensure the TRM does not become obsolete nor the savings estimates unreliable, a purpose which could be frustrated with ease should a Program Administrator decide to dispute a proposed Update. *Id.* at 5. In that situation, the Update process would likely continue beyond the end of the Plan Year, and an out-dated TRM would continue to be in place until the disputes were resolved by the Commission. See *id.*

Moreover, the Commission should ignore arguments that enforcing the applicability timeframes for each version of the TRM would require the Utilities to “start over” each Plan Year. PO at 8. The previous TRM version can, and should, be used as a starting point each year. Staff Initial Comments at 3. Additionally, for those measures that have not changed over the previous Plan Year, it is virtually certain that they will remain the same in the next TRM. *Id.* Therefore, it is incorrect to state that the Utilities will “start over” each Plan Year; the parties will have a starting point from which to work each new Plan Year, will have been involved in discussions during the Update Process (before the new Plan Year), and will have, at the very least, a good indication of the new measure values well before the new Plan Year began, even if there were disagreements about some measures. Staff Initial Comments at 6. Indeed, the AG/CUB concur with this point for non-consensus issues:

[U]tility program planners could assume the continuation of the previous year's measure values or an opposing party's assumed value for purposes

of planning and program implementation. Adjustment of parameter values in a Commission order that went against a utility position would then not impact an evaluator's assessment of utility program performance. Likewise, a utility might prevail in a non-consensus docket -a point that the Utilities Comments seem to ignore. In those instances, additional energy savings would be counted for the affected measure during the remainder of the Program Year. No harm would come to any utility forecast of energy savings performance.

AG/CUB Reply Comments at 10. Thus, any assertion that utilities will be faced with a blank slate should be rejected. If Staff's alternative recommendation to have the Updated TRM submitted to the SAG by November 1 is adopted, then this issue becomes moot because if the Commission approves the consensus Updated TRM and issues a resolution on non-consensus TRM Update issues prior to March 1, then the Updated TRM (consensus and resolved non-consensus portions) would take effect at the beginning of the applicable Plan Year, June 1. Since Staff's alternative recommendation to have the Updated TRM submitted to the SAG by November 1 provides the Commission with adequate time to issue Orders in both the consensus and non-consensus TRM Update dockets, there would be no uncertainty as to what TRM is in effect at the start of the applicable Plan Year. Accordingly, the PO should be modified as follows:

The Commission adopts the recommendation advanced by Staff AG/CUB ~~and the Utilities~~ and concludes that the TRM's goals of continuity and updating would be better served if the TRM reflects the most up-to-date measures available for each Plan Year. Therefore, the TRM shall apply only to the Plan Year for which it was designed and intended. ~~remains in effect following the end of each Plan Year until it is modified or updated in accordance with a Commission final order.~~ It is evident from the record that the TRM's repeated references to annual updates and the "TRM Update Process" emphasize its continuous nature and demonstrates an intention by the parties to have the TRM updated to reflect the most up-to-date measures. ~~remain in effect for future plan years until modified or updated pursuant to a Commission order.~~ To require that the Utilities start over each Plan Year and wait for new, Commission-approved TRM values would cause the Utilities to face needless uncertainty regarding the key values needed for program design and implementation decisions. This supports ~~would contradict~~ the purpose of the energy efficiency targets imposed by the

General Assembly in order to “reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” creating stability and certainty for Program Administrators as they make program design and implementation decisions.

Additionally, the Commission rejects in the assessment that the parties will be “starting from scratch” each year; the previous TRM can and should be used as a starting point, and the Commission considers it virtually certain that many of the parameters in any given TRM will remain the same in the next TRM. Furthermore, allowing any TRM to be effective beyond its Plan Year would incent the Utilities to contest any changes to program measures that would result in lowering savings for a particular measure, regardless of how realistic or meritorious such changes in fact were. This would result in the TRM becoming a static document, rather than living. Moreover, it would paint an inaccurate picture of the efficacy of the energy efficiency programs in meeting the statutory savings goals, while creating incentives for the Utilities to administer the energy efficiency programs in an inefficient manner. However, as described later in this Order, the Commission adopts Staff’s alternative recommendation such that the Commission will issue Orders in the consensus and non-consensus TRM Update dockets prior to the start of the program year for which the Updated TRM takes effect. Thus, the parties will use the Updated TRM each year.

III. Impact of Disagreement Regarding Subcomponent of TRM Measure

The PO concludes that “in the event of a dispute about an input to a measure or its subcomponent, that input should not be removed but instead the Commission-approved calculation should remain intact and the affected measure remain as part of the TRM until the Commission approves a new value to take its place.” PO at 11. This issue is brought up only in the context of the TRM Update Process, not for disputes over measures during the effective dates of the TRM. To the extent that the PO suggests that whether a “Commission-approved calculation should remain intact and the affected measure remain as part of the TRM until the Commission approves a new value to take its place,” Staff takes exception. PO at 11. The Commission specifically limited the consideration on rehearing to three issues. This issue was not one of those three issues. Furthermore, the

PO states that for purposes of continuity and certainty, measures for which there are disputes should not be removed from the TRM. PO at 8; 11. However, the PO fails to acknowledge Staff's proposition to remove non-consensus components of measures over which there are disputes from the consensus Updated TRM document submitted to the Commission for approval during the TRM Update Process. Staff Initial Comments at 8-11; Utilities' Expedited Application for Rehearing to Clarify TRM Policies at 2. Non-consensus issues that arise during the TRM Update Process would not result in removal of the non-consensus portion of the measure in the previous Commission-approved version of the TRM; they would simply not be included in the consensus Updated TRM submitted to the Commission for approval. Staff Initial Comments at 8.

Additionally, the non-consensus issues would be presented to the Commission in a separate docket for the Commission to consider and make a determination. *Id.* The TRM Update Process is intended to be conducted in this manner so as to save the Commission and the parties time and resources; allowing the consensus issues to be dealt with quickly, and separately dealing with the non-consensus issues more minutely. Once the Commission had considered both the consensus document and the non-consensus document, the resolution on the non-consensus measures would be included in the Updated TRM along with the consensus measures, and both would be applicable at the start of the Plan Year for which the TRM was being updated. See *id.* at 9. This was agreed upon by all the parties pursuant to the *IL-TRM Policy Document*, which was not at issue on rehearing. *Id.* at 8; *IL-TRM Policy Document* at 6. Therefore, the PO exceeds the scope of the rehearing by concluding that "[r]emoval of entire measures, or even subcomponents of measures, would result in program interruption and confusion that would likely discourage

Contractor and customer participation and be antithetical to the controlled measure changes required for successful implementation of Commission approved EE measures.” PO at 11. The contemplated removal would occur during the update process, which would cause no interruption or confusion, and it would be a part of the controlled measure changes required for successful implementation.

Finally, there would be no interruption or confusion from removing non-consensus issues from the consensus issues for separate consideration by the Commission during the TRM Update Process if Staff’s alternative recommendation is adopted because the Commission will resolve such non-consensus TRM Update issues prior to the start of the applicable program year. Therefore, Staff recommends the PO be altered to read as follows:

We agree with ~~Staff AG/CUB and the Utilities~~ and find that existing Commission-approved TRM measures should not be removed from the TRM consensus Updated TRM document during the TRM Update Process, ~~rather only if there is a subsequent disagreement over a measure or a disputed subcomponent of a measure.~~ As we concluded in the previous section, the TRM is a “living” document designed to have continuity. The same reasons and policy objectives that support the position that the old version of the TRM should not remain in effect following after the end of each Plan Year until new values are approved also support ~~not removing non-consensus issues from the consensus Updated TRM measures during the TRM Update Process, due to a subsequent disagreement over a component.~~ The Commission-approved TRM should provide certainty regarding the values to be used by Utilities and evaluators when planning, implementing and evaluating energy efficiency programs. Since we adopt Staff’s alternative recommendation to begin the TRM Update Process earlier in the program year, as discussed later in this Order, the Commission will resolve non-consensus TRM Update issues prior to the start of the program year for which the Updated TRM will be in effect. Thus, r~~Removal of entire measures, or even subcomponents of measures from the consensus Updated TRM, would not result in program interruption and or confusion that would likely discourage Contractor and customer participation and would be part of antithetical~~ to the controlled measure changes required for successful implementation of Commission approved EE measures.

The Commission therefore finds that in the event of a dispute about an input to a measure or its subcomponent during the TRM Update Process, that input should be considered by the Commission in a non-consensus TRM Update docket separately from the consensus TRM Update docket, not be removed but instead the Commission-approved calculation should remain intact and the affected measure remain as part of the TRM until the Commission approves a new value to take its place. Once the Commission approves the consensus and non-consensus TRM Updates, then all approved measures would be considered the Updated IL-TRM applicable for the entirety of the Plan Year for which the TRM was being updated.

IV. Application of Resolved Measure Level Issues

After the Commission makes a determination on non-consensus measure level issues presented during the TRM Update Process, the resolved measure should apply to the Plan Year for which the consensus portion of the Updated TRM applies. Staff Initial Comments at 11. Any other outcome will result in out-dated measures implemented in the TRM, which is antithetical to the purpose and intent of the “living” TRM document. *See id.* If the Commission resolves a measure level issue, but also allows a previous measure value to remain effective, then the Commission would be effectively increasing the savings values above what it found to be appropriate for that given measure. This is true even for the “60 day grace period” contemplated in the PO. The 60 day grace period still allows the Program Administrators to falsely ascribe savings values that the Commission found to be inappropriate for two months. See Staff Reply Comments at 33.

Moreover, Staff recommends the PO should be amended to adopt Staff’s proposed alternative recommendation: a November 1 deadline should be adopted for submission of the Updated TRM to the SAG. Staff’s alternative recommendation satisfies all parties’ concerns; it was not opposed by the AG/CUB, and the Utilities’ Reply Comments indicate they are open to an earlier deadline than March 1. Utilities Reply Comments at 13-14. Under Staff’s alternative recommendation, the Commission

will resolve the non-consensus TRM Update issues prior to the start of the applicable program year for which the TRM was being updated. Thus the Utilities and the evaluators will be able to use this single set of Commission-approved Updated TRM values across the entire program year in their implementation and evaluation. This will greatly simplify the implementation and evaluation process and is consistent with the intent of the TRM Policy Document agreed to by all parties.

Therefore, Staff recommends the PO state the following:

The parties propose three different recommendations regarding when Commission-resolved measure level non-consensus issues should be applied. Although AG/CUB and the Utilities advocate for prospective application, the Utilities recommend that the measures should be applied to the following Plan Year while AG/CUB posits that prospective application should begin within 60 days of the Commission's Final Order on the issues. Staff advocates for application to the start of the program year for which the TRM was being updated in the first place~~retroactive application~~. The Commission finds that Staff's position~~the compromise 60-day post-ICC Order grace period position endorsed by the AG/CUB~~ is a fair and reasonable position that serves the goal of ensuring cost-effective programs by not falsely ascribing inappropriate savings values ~~for an entire year but also providing the Utilities with the time to adjust the affected measure's program delivery, should that be necessary, based on the updated parameter value.~~ The Staff AG/CUB position~~represents a reasonable compromise affecting the evaluation and delivery of utility programs, and ensures that the most up-to-date parameters are incorporated into energy savings calculations and program planning.~~

Staff's alternative proposal to have the non-consensus issues submitted to SAG by November 1 is reasonable, provides certainty and the prospective application advocated by AG/CUB and the Utilities, and is hereby adopted. This requirement shall begin in 2014 with the submission of the TRM Version 4.0 to be submitted to the SAG November 1, 2014.

Given it is already late in this calendar year, TRM Version 3.0 shall still be submitted by March 1, 2014. However, to the extent the Commission issues Orders on or after June 1, the resolution of those issues shall be applied retroactively, beginning June 1 of that Plan Year. Doing otherwise would incent the Utilities to continually delay implementing improvements to their energy efficiency measures and creates costly reporting requirements for the Utilities and the evaluators for the program year.

V. Findings and Orderings Paragraphs

Accordingly, Staff recommends the Findings and Orderings paragraphs be amended to state as follows:

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the subject matter hereof and the parties hereto;
- (2) The recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) Commission-approved TRM values shall remain in effect only for the Plan Year for which it was designed and intended ~~following the end of each Plan Year until modified or updated in accordance with a Commission Final Order;~~
- (4) ~~Commission-approved~~ A non-consensus subcomponent of a TRM measure shall not be removed from the consensus Updated TRM and considered by the Commission separately from that document on the basis that there is a subsequent disagreement over the ~~a~~-subcomponent of that measure; and
- (5) Commission-determined resolutions of TRM measure level non-consensus matters that are issued during a Plan Year shall be applied to the beginning of the Plan Year for which the TRM was being updated~~after allowing for a 60-day grace period for implementation.~~

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the IL-TRM Policies, as filed in this docket and as clarified under finding three (3) through five (5), are approved and adopted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the parties shall comply with findings three (3) through five (5).

IT IS FURTHER ORDERED that Staff must file as a compliance filing, a revised IL-TRM Policy Document that reflects the following changes within 45 days of the date of the Commission Order on Rehearing in this docket:

Each Plan Year, the consensus and non-consensus TRM Updates that will comprise the Updated TRM applicable to the following Plan Year shall be

submitted to the SAG by November 1 such that Staff can submit the consensus and non-consensus portions of the Updated TRM with the Staff Reports it submits to the Commission to initiate proceedings to consider approval of the Updated TRM (consensus and non-consensus TRM Updates) on an expedited basis. Such Staff Reports shall also recommend that the Commission's Initiating Order establish a schedule for the submission of Initial and Reply Comments such that the Commission can approve the Updated TRM (consensus and non-consensus TRM Updates) by March 1. In the event that the Comparison Exhibit of Non-Consensus TRM Updates that appropriately reflects each party's position is not submitted to the SAG by November 1, then Staff shall move forward without such document and submit a Staff Report to the Commission describing the non-consensus TRM Update issues such that the Commission's Initiating Order can appropriately limit the scope of the non-consensus TRM Update proceeding to only those areas of non-consensus.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved are hereby disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

VI. Conclusion

WHEREFORE, Staff respectfully recommends the Commission approves Staff's modifications to the ALJ's Proposed Order made herein.

Respectfully submitted,

_____/s/_____

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